

NOTICE OF FIRST AND SECOND PUBLIC HEARINGS
ON PROPOSED CHARTER AMENDMENTS
FOR MARCH 5, 2019 ANNUAL CITY MEETING

Pursuant to the requirements of 17 V.S.A. Sec. 2645, the first public hearing concerning proposed amendments to the Burlington City Charter by the City Council will be held Tuesday, January 22, 2019 at 7:00 p.m. in Contois Auditorium, City Hall, Burlington, Vermont. The second public hearing concerning these proposed charter amendments will be held on Monday, January 28, 2019 at 7:00 p.m. in Contois Auditorium, City Hall, Burlington, Vermont.

These charter amendments are proposed to be voted on at the Tuesday, March 5, 2019 Annual City Meeting.

The following changes (deleted matter in brackets and strikeout and new matter underlined) are being proposed by the City Council:

1. *"Shall the Charter of the City of Burlington, Acts of 1949, No. 298 as amended be further amended to amend Article 81, Tax classification; repeal of inventory tax, subsection (a), as follows:*

81 Tax classification; repeal of inventory tax.

(a) Except for the property of utilities subject to the provisions of 30 V.S.A. Chapter 3, all personal and real property set out in the grand list which is not used as residential property, farmland, and vacant land zoned "recreation, conservation and open space (RCO)", shall be classified as nonresidential property and shall be assessed at one hundred twenty (120) percent of fair market value; and further provided that inventories and personal property belonging to an owner whose total personal property does not exceed the fair market value of \$45,000.00 shall no longer be set out in the grand list of the city as taxable personal estate. Additionally, every owner whose total personal property does exceed the fair market value of \$45,000.00 shall be taxed only on the amount of such property that exceeds \$45,000.00. The amount of the exemption may be increased by the City Council prior to approval of the next fiscal year's budget. Properties upon which in-lieu-of-tax payments are made shall be likewise classified and assessed for the purposes of such payments. The tax on nonresidential personal property shall be eliminated effective July 1, 2026, or sooner by resolution of the City Council.?"

2. *"Shall the Charter of the City of Burlington, Acts of 1949, No. 298 as amended be further amended to amend Articles 19 and 38 and add Article 92A as follows:*

ARTICLE 19. POWERS OF CITY COUNCIL

48 Enumerated.

The city council shall have power:

...

(63) (A) *To establish and maintain a unified department of public works, the superintendent of which will be designated public works director, said department to be managed and controlled by the mayor and city council-~~[subject to the general laws of the State of Vermont pertaining to the inspection of buildings, plumbing, housing and wiring]~~. The city council may by resolution delegate any of its powers relating to the public works department to the board of public works commissioners.*

...

(E) *Unless otherwise determined by resolution of the city council, the public works department shall, in addition to the director, consist of a streets division, water division, waste/solid waste division, traffic division, finance division, equipment maintenance division/engineering division,~~[inspection services division,~~ and construction division, each of which shall include a manager who shall be hired as a city employee by the director and shall serve subject to the direction of the director.*

116 Duties generally.

The mayor shall be the chief executive officer of said city. The mayor shall use his or her best efforts to see that the laws and city ordinances are enforced and that the duties of all subordinate officers are faithfully performed. The mayor shall take care that the funds of the city are properly expended, and shall recommend to the consideration of the city council whatever measures the mayor may deem necessary for the prudent and efficient management of the affairs of the city. The mayor shall also be the chief conservator of the peace and safety of the city and as such is empowered to control and direct the police force, in case of riot, insurrection or other emergency, when the mayor may take command of the whole police force, including the chief executive thereof, and may for the occasion appoint and commission as many special policemen as the mayor may deem necessary, who shall have all the powers of regular members of the police force. Any emergency as provided for in this section shall not be construed to be the operation of the police force in its routine duty. The mayor shall serve as a voting member of the local control commissioners. The mayor shall have those powers of a justice of the peace in the State of Vermont with respect to the performance of marriage and/or civil unions. The mayor, commencing on the first Monday in June 2002, shall appoint all city department heads who were heretofore appointed by city commissions, with the exception of the superintendent of schools, who shall continue to be appointed by the board of school commissioners,~~[and planning director who shall continue to be appointed by the planning commission]~~. Such appointments shall be subject to confirmation by a majority of the membership of the city council. The appointment by the mayor to the position of city officer or department head shall be on the basis of professional competency and/or meritorious performance relating to the duties of the position. In making department head appointments and in evaluating their performance, the mayor shall consult with the applicable city commission. At least two applicable commissioners chosen by the chair shall be invited to participate in interviews for department head selection. The full applicable commission shall formally participate in the annual evaluation of a department head and shall make a formal recommendation to the mayor concerning the reappointment of a department head. Department heads shall have such administrative, personnel and managerial authority as shall be delegated to them by the mayor.

ARTICLE 38. OFFICERS APPOINTED BY MAYOR

122 Enumerated.

(a) *On the first Monday in June 1998, the mayor shall appoint a city assessor and a director of the human resources department for a one-year term commencing July 1, 1998. Commencing on the first Monday in June 1999, and biannually thereafter, the mayor shall appoint such city assessor and human resources director for a term of two years commencing on the first day of July following the appointment, and until their successors have been appointed and qualified. The mayor shall appoint on the first Monday of June, 1998 and annually thereafter, and whenever a vacancy occurs, a chief administrative officer, a city attorney and one or more assistant city attorneys, a city constable and a second, third and fourth constable, a city engineer and surveyor, a city grand juror and assistant city grand juror, a harbor master, a poundkeeper or a firm or corporation to provide the services of such, a director of the community and economic development office, a director of Burlington city arts and civil defense director. All of the above-referenced appointments shall require the approval of a majority of the city council. Additionally, commencing on the first Monday in June 2002, and whenever a vacancy occurs, the mayor shall appoint a director of aviation, a cemetery superintendent, an executive director of the Church Street marketplace district, a general manager/superintendent of the electric department, a chief engineer of the fire department, a librarian(s) of the Fletcher Free Library, a superintendent of the parks and recreation department, a police chief and a superintendent/director of the public works department. The mayor shall also appoint a director of permitting and inspections, a zoning administrative officer, and a director of planning. The first two appointments of an individual to serve in any such position shall be for one-year terms. After an individual has served in a position for two successive years, the mayor may thereafter appoint such person to serve terms of not more than three years, except that in no case shall an appointment be valid for more than fifteen months following the election of a new mayor. In all cases, such appointments shall continue until their successors have been appointed and qualified. The mayor shall also have the authority to appoint the superintendent/director of any city department which may hereafter be created by the city council.*

(b) *The appointments described in subsection (a) of this section shall require the approval of a majority of the whole number of the city council. In cases where the mayor appoints an individual for a term longer than one year, the city council must also approve the duration of such term.*

130 Manner of filling vacancy and residency requirement.

(a) *In case of a vacancy for any cause in any office referred to in the preceding section, such vacancy shall be filled in the manner herein provided for appointment thereto, but only for the remaining months of the then current fiscal year, plus one additional year, or for the balance of the unexpired term, whichever is the shorter.*

(b)(1) *Any individual elected to the position of Mayor must be a legal voter of the City as of the date the written consent required by 17 V.S.A. § 2681(a) is filed and at all times during his or her term of office.*

(2) *Any individual elected to the position of City councilor or school commissioner must be a legal voter of the City and of the ward or City district he or she proposes to represent*

as of the date the written consent required by 17 V.S.A. § 2681(a) is filed and at all times during his or her term of office.

(3) Any person appointed to serve as a member of any City commission must, except as otherwise specifically provided for herein, be a legal voter of the City at all times during his or her term of office.

(c) Except as provided below, any person appointed by the mayor and approved by the city council for the position of city assessor, city attorney, chief administrative officer, city constable, civil defense director, director of the office of community and economic development, harbor master, planning director, director of permitting and inspections, or human resources director, and any person appointed to be the superintendent or corresponding chief executive officer of the cemetery, electric light, fire, parks and recreation, ~~planning~~, police, public works or school departments shall, in order to be legally eligible to serve, either be a legal voter of the city as of the date his or her term of office commences and at all times thereafter or, if not a legal voter as of the date his or her term of office commences, shall become a legal voter within the city within one year from the date such term of office commences and maintain such status at all times thereafter. In case of personal hardship found and declared to exist by the city council with mayor presiding, the time limit for an individual to become a legal voter of the city may be extended for a set period of time beyond one year.

(d) The above subsections hereof shall not be considered applicable to an incumbent in the above listed positions so long as such incumbent remains in the position which he or she holds as of March 1, 1994. Nor shall the above subsections be regarded as applicable to any city position which is not listed above or to the appointed assistants in any position listed above.

(e) In case any person holding any elective or appointive office in the city shall at any time for any reason become legally disqualified to hold such office, such office shall thereupon become vacant and shall be filled for the unexpired term in which such vacancy occurs and in the manner herein provided for filling such vacancy.

(Act No. M-15, § 2, approved 3-4-14)

Article 92A. DEPARTMENT OF PERMITTING AND INSPECTIONS

370 Creation of department of permitting and inspections

There is hereby created in the City of Burlington the department of permitting and inspections, which shall combine the permitting and inspection functions of the previously existing planning and zoning department, inspection services division of the department of public works, and code enforcement office.

371 Purposes and powers.

(a) Subject to the orders and ordinances of the city council, the department of permitting and inspections shall provide a single location to obtain permits and inspection services for all zoning, building, plumbing, electrical wiring, and minimum housing and rental unit matters.

(b) In furtherance of its purpose, the department of permitting and inspections shall, subject to the orders and ordinances of the city council, have the following rights, powers and duties:

(1) To review development projects and ensure compliance with the City's building codes, land use bylaws, historic preservation guidelines, design, and subdivision standards;

(2) To issue permits, as provided in state law and local ordinances, for building, zoning, and related matters;

- (3) To conduct inspections, as provided in state law and local ordinances, of buildings, plumbing systems, electrical wiring, and related matters;
- (4) To conduct inspections to ensure compliance with zoning requirements and zoning, building, or related permits;
- (5) To conduct inspections of rental housing units to ensure compliance with the Minimum Housing Code or other housing codes;
- (6) To notice and enforce violations of building, zoning, minimum housing, and other laws, regulations, codes, or ordinances, as provided therein;
- (7) To carry out the orders of the Board of Health.

372 Department to be under supervision of director.

The management, direction and control of the department of permitting and inspections shall be vested in the director, subject to the orders and ordinances of the city council.

373 Powers, duties, and responsibilities of zoning administrative officer.

The zoning administrative officer shall have all of the powers, duties, and responsibilities as are provided in the Vermont Planning and Development Act to an administrative officer. The director of permitting and inspections may also serve as the zoning administrative officer. In addition, the zoning administrative officer may delegate any or all of the officer's authority under the Vermont Planning and Development Act to one or more assistant administrative officers as are qualified. Any such delegation must be made in writing and posted in the department offices.

374-400 [Reserved.]. ?"

3. "Shall the Charter of the City of Burlington, Acts of 1949, No. 298 as amended be further amended to amend Article 89 as follows:

ARTICLE 89. CHURCH STREET MARKETPLACE; DISTRICT AND COMMISSION DOWNTOWN IMPROVEMENT DISTRICT

321 Creation of downtown improvement district; purpose[, church street marketplace district and marketplace].

(a) There is hereby created in the City of Burlington a special district to be known as the downtown improvement district (DID), such district to be bounded as follows:

- On the west by the shoreline of Lake Champlain.~~on the west]~~

- On the north, by the north property lines of properties fronting on Pearl Street between South Winooski Avenue and Battery Street and by the north property line of Battery Park and the

north property line of the property owned by the City of Burlington west of Lake and Depot Streets~~[on the north,]~~.

- On the east, by the east property lines of properties fronting on South Winooski Avenue from the south side of Pearl Street to the south side of Main Street (but also including the property on the southeast corner of Main Street and South Winooski Avenue) ~~[on the east, and]~~.

- On the south, by the north side of Maple Street from ~~[property lines of properties fronting on]~~ the properties fronting on the west side of South Winooski Avenue to those fronting on the west side of St. Paul Street, and then west of St. Paul St. by the south property line of the properties fronting on Main Street to Battery Street and then including all of the properties fronting on Battery Street from Main Street south to the north side of Maple Street, but also including the property contiguous to the east property line of the property on the northeast corner of Maple and Battery Streets and the property on the southeast corner of Maple and Battery Street, as well as the property contiguous to the east of it. ~~[to the intersection of Battery Street and then extending southerly to include properties fronting on Maple Street on the south, except that the boundary shall also extend to the east property line of properties fronting on the east side of Saint Paul Street that are south of Main Street and north of Maple Street. The Church Street Marketplace District defined below shall also be included within the downtown improvement district.]~~

(b) The purpose of the Downtown Improvement District (hereafter known as the DID) shall be to:

(1) Create a unified and efficient approach to downtown management, marketing, and maintenance by replacing the existing downtown improvement district and the Church Street Marketplace District with a single, new DID;

(2) Provide enhanced services that address downtown's most pressing challenges and opportunities, such as improving public safety and cleanliness, enhancing mobility, economic vitality, parking management, and marketing of downtown Burlington;

(3) Provide a clean, safe and welcoming downtown experience for all community members;

(4) Help to address issues with street-level behavior and provide increased services for vulnerable populations;

(5) Offer accountability to fee payers while maintaining strong accountability to the public;

(6) Strengthen downtown's competitiveness within the region;

(7) Leverage public and private resources for the betterment of downtown;

(8) Create a self-sustaining champion to advocate for downtown improvements over the long term.

~~[(c) The Church Street Marketplace (marketplace) shall be that section of the district now or hereafter under the direct control of the City of Burlington including but not limited to the Church Street right of way and adjacent sidewalks.]~~

(c) There is hereby created in the City of Burlington and within the downtown improvement district a ~~pedestrian mall~~ ~~special district~~ to be known as the Church Street Marketplace [~~District~~ (~~district~~)] which includes all of Church Street and the properties which have frontage thereon bounded on the north by the northernmost property line of properties bounded by Church and Pearl Streets, and bounded on the south by the southernmost property lines of properties at the northern corners of the Church and Main Street intersection, and more precisely shown on a plan entitled "Church Street Marketplace District" recorded with the chief administrative officer of the City of Burlington on June 27, 1979. Until the DID is activated by resolution of the city council, following its approval of a management plan and bylaws for the DID, the Church Street Marketplace District shall continue to operate under the Church Street Marketplace Commission as provided throughout this Article below. Once the DID is activated, the sections relating to the Church Street Marketplace District and Commission will be deemed repealed as noted below.

(d) The boundaries of the DID (or the Church Street Marketplace) may be expanded to properties contiguous to the existing DID by resolution of the city council, upon receipt of a petition signed by the owners of two-thirds of the properties included in the proposed expansion.

322 Establishment of ~~commission~~ DID Entity.

(a) A non-profit entity will be formed to manage the DID, to be known as the Burlington Downtown Improvement District. It will be governed by a board of directors comprised of thirteen voting and four non-voting directors as follows:

- Seven directors appointed by the city council with mayor presiding, consisting of one resident who lives within the boundaries of the DID, one resident who lives within the City of Burlington, one representative from a non-profit organization located within the boundaries of the DID, two owners of businesses located within the boundaries of the DID, and two owners of real property located within the boundaries of the DID.

- Six directors selected by the fee payers through a process to be established in the bylaws of the DID, consisting of one director who is a resident living within the boundaries of the DID, two directors who are owners of businesses located within the boundaries of the DID, three directors who are owners of real property located within the boundaries of the DID.

- Four ex-officio, non-voting directors from the city's Department of Public Works; Department of Parks, Recreation and Waterfront; Police Department; and City Council.

(b) By-Laws, Open Meetings, and Public Records

(1) The board will adopt by-laws by which to govern itself, subject to the approval of the city council.

(2) The board will comply with the Vermont Open Meeting Law and Public Records Act.

(c) Until the DID above is activated, [F]there shall be maintained in the City of Burlington a Church Street Marketplace Commission consisting of nine legal voters of the State of Vermont, no fewer than five of whom must be legal voters of the city, who shall be appointed by the city council. [~~On the first Monday in June, 1993, the city council shall appoint four commissioners, three for a three year term and one for a four year term.~~

(1) ~~On the first Monday in June, 1994, the city council shall appoint one commissioner for a three year term and on the first Monday in June, 1995, the city council shall appoint two commissioners for three year terms. On the first Monday in June, 1999, the city council shall appoint two commissioners for a two year term. Thereafter, a]~~ All appointments shall be for

three-year terms and commissioners shall serve from the first day of July following their appointment and until their successors are duly appointed and have qualified.

(21) Two members at all times shall be proprietors or managers of retail businesses which are within the Church Street Marketplace District and such members need not be residents of Burlington. Two members at all times shall be proprietors or managers of retail businesses which are within the downtown improvement district, with one of such members being located within the downtown improvement district but outside the boundaries of the Church Street Marketplace and such members need not be residents of Burlington.

(32) The commission shall organize by the election of a chair and vice-chair and by the appointment of a clerk and a treasurer. The clerk shall keep a written record of the proceedings of the commission, such record to be the property of the city. The clerk need not be a member of the commission.

(43) The manner of removal of commissioners and filling of vacancies shall be as provided in sections [129](#) and [130](#) of this chapter, and the commissioners shall, except as otherwise herein expressly provided, be subject to all other provisions of this chapter relating to public officers.

(4) This subsection (c) shall be deemed repealed upon activation of the DID.

~~[323 Expansion of church street marketplace district and/or marketplace.~~

~~(a) Upon recommendation of a majority of the commission to the city council, the boundaries of the Church Street Marketplace district may be expanded. Said boundaries may be expanded only if all the following conditions are met:~~

~~(1) Notification of the consideration of the expansion is given in writing to all persons owning property in the contemplated area of expansion;~~

~~(2) A legally warned public hearing on the question is conducted;~~

~~(3) Two thirds of the membership of the city council present and voting approve the extension;~~
~~and~~

~~(4) The expanded boundaries do not extend beyond the boundaries of the downtown improvement district above defined.~~

~~(b) Upon advice of the commission to the city council, that section of the district now or hereafter defined as the marketplace may be expanded or not within the downtown improvement district, subject to the same restrictions listed under (a) above.]~~

324-323 Purposes and Powers and duties.

(a) The ~~[city council]~~ DID entity, through its board of directors, shall have authority and responsibility for the management of the DID, ~~[Church Street marketplace district,]~~ its services, and any facilities it owns or operates, as fully described in the DID management plan approved by the city council. The city, through the city council and mayor, shall retain its core governmental obligations and functions. ~~[have the responsibility to establish, improve and maintain a marketplace within the district.]~~

(b) In furtherance of its purpose, the ~~[city council]~~ DID entity shall have the following rights, powers and duties within the DID, subject to all standard city review and approval processes:

(1) ~~To [exercise the powers set forth in the first paragraph of section 231 of this Charter with respect to the marketplace; provided that, in relation to the electric light department, the commission shall have the same status as a private user;]~~ employ staff or to contract with other entities to provide services, as the board of directors deems necessary, to oversee or perform the rights, powers, and duties described herein;

(2) To contract with or contribute to an experienced local service provider to assist vulnerable individuals or populations in the DID;

(3) To provide or contract for enhanced maintenance services in the public spaces and rights-of-way within the DID;

(4) To provide or contract for, manage, and maintain enhanced aesthetic elements such as lighting, landscape, and design in the public rights-of-way in the DID, subject to city approval;

(5) To provide marketing, business promotion, and programming to attract residents, visitors, and consumers to the DID;

(6) To provide business support services, such as economic data and tenant recruitment, to assist economic development in the DID;

(7) In coordination with the city, to provide and support parking management services, enhance alternative transportation and mobility, and improve connections between downtown and the waterfront;

(8) To recommend to the city council ordinances or amendments to ordinances to further the purposes of the DID.

(9) To prepare an annual budget, including both expenses and fee rates, subject to approval by the city council, and to administer that budget for the purposes of the DID after approval; if the city council does not approve a budget, it will state the grounds for disapproval, and the budget will be returned to the board of directors for reconsideration, revision, and resubmission for final city council approval.

(10) To establish and maintain bylaws for the operation of the board of directors, subject to council approval and the provisions of this Article;

(11) To appoint members of the board of directors as provided herein and in the approved bylaws.

(12) In coordination with the city, to mutually agree to a base level of services that the city will provide;

(13) To prepare a management plan, subject to city council approval, and then implement the plan;

(14) To accept or solicit donations or grants to be used for the purposes of the DID.

(c) In furtherance of the purpose of the DID, the city council (or such other body within the city to whom the authority over such matters has been delegated under this charter) shall have the following rights, powers and duties within the DID:

(1) To control the use of the public rights of way, including streets, sidewalks, and other publicly owned spaces, within the DID;

(2) To acquire on behalf of the city by gift, purchase, exercise of the power of eminent domain, or otherwise, all types of interests in real property and rights-of-way which will become part of the ~~[marketplace]~~DID to be used in connection therewith;

(3) To ~~pay for,~~ construct or contract for the construction of capital improvements of any kind or nature necessary or convenient for the establishment or operation of the ~~[marketplace]~~DID;

(4) To pay, from any funds available, ~~[from the funds provided for herein,]~~ the whole or any portion of the cost of constructing and maintaining such improvements, including the cost of preliminary planning for the ~~[marketplace]~~DID;

(5) To regulate or prohibit, in whole or in part, vehicular traffic, parking, or other transportation modalities~~[, other than motor vehicle traffic]~~ within any portion of ~~[on the marketplace]~~the DID~~;~~
~~[, and to recommend to the public works commission the prohibition or regulation of motor vehicle traffic within the downtown improvement district;~~

~~(6) To recommend to the planning commission the imposition of restrictions on the height, use and exterior appearance, including restrictions on the use of signs, for buildings fronting on the marketplace; such restrictions to be imposed only after notice and public hearings and, except for the use of signs, such restrictions to be prospective in nature;~~

~~(7) To make such improvements within the Church Street Marketplace district as are necessary or convenient to the operation of the marketplace;~~

~~(8)~~ 6 To enter into contracts in the name of and on behalf of the city with state or federal agencies, including without limitation the ~~[Chittenden County Transportation Administration]~~Green Mountain Transit, as may be necessary or convenient to carry out the purpose of this article;

~~(9)~~ 7 To lease space, including air rights, in, below and above the marketplace or other public spaces within the DID, but only in compliance with section 55 of this Charter;

~~(10) To appoint such employees and agents as it may deem necessary or expedient for the operation of the marketplace. The director shall be appointed by the mayor in accordance with the requirements of section 127 of this Charter. The director shall have~~

~~the special and immediate care and practical supervision of the marketplace, subject to the authority of the mayor as chief executive officer and the orders and ordinances of the city council;~~

~~(11) To enter into management and maintenance contracts to facilitate the carrying out of any of its powers and duties enumerated herein, such contracts to be, where the commission deems it appropriate and practicable, with operating departments of the city;~~

~~(12)~~ (8) To issue permits for various uses in the [marketplace]DID, and to adopt regulations and charge fees for [such issuance]those permits;

~~(13)~~ 9) To charge [rentals and]-fees to the DID entity for its services beyond the base level of services and for use of space in the [marketplace]DID;

~~(14) To receive and expend voluntary contributions for the carrying out of its purposes;~~

~~(15) To advertise and promote the marketplace and its activities pursuant to this section when the commission determines that such advertisement and promotion will promote the prosperity and general welfare of the citizens of the City of Burlington and of the state;~~

(10) To adopt ordinances or other rules or regulations to support the purposes of the DID, including the Church Street Marketplace;

(11) To appoint members of the DID board of directors as provided in this Article;

(12) To mutually agree with the DID entity to the base level of services that will be provided by the city.

(13) To approve the DID management plan submitted by the DID entity;

(14) To contract with the DID to provide services to public buildings, parks, or other public spaces within the DID;

(15[6]) To do all other things necessary or convenient to carrying out the purposes of this article. Nothing herein shall be construed to mean that the city council may interfere with or regulate the internal management of properties within the district.

~~([e] d)~~ The city council may, by resolution or ordinance, delegate to or contract with the DID entity to perform any of the above duties or exercise any of the above rights or powers [any of the powers] relating to the downtown improvement district, [and the Church Street marketplace district to the Church Street marketplace commission.]

(e) Until the DID is activated, the Church Street Marketplace commission shall have the powers, rights, and duties granted to the DID above, in relation to the Church Street Marketplace, and any other rights or powers that the city council may delegate by resolution. This subsection (e) shall be deemed repealed upon activation of the DID.

325 [Annual taxation]Special assessment for downtown improvement district[; free parking for two hours in public lots and garages; annual budget of church street marketplace district].

(a) A special assessment fee shall be imposed as provided herein; that fee is to be used to enhance, not replace, city services. [- The Church Street Marketplace commission]As part of its budget, the DID board of directors shall annually recommend and the city council shall annually approve and assess upon nonresidential properties [as defined in Sec. 81 hereof]-located within the downtown improvement district, except those that are owned and occupied by religious organizations, social service providers, the city of Burlington, or other government agencies, a [tax]-special assessment fee, based upon a methodology recommended by the DID board of directors and approved by the city council, [upon the dollar of the property grand list] to be used for the herein enumerated purposes of the downtown improvement district, the rate of which fee[tax] shall not [exceed] increase by more than five percent (5%) over the prior year's rate unless approved by a two-thirds vote of both the DID board of directors and the city council. [\$0.12 unless a larger amount has been authorized by the city council upon affirmative recommendation of the Church Street Marketplace commission.-] If a nonresidential property is leased to, but not owned by, a religious organization, social service provider, the city of Burlington, or another government agency, it shall be assessed in a manner comparable to state law for the statewide property tax. Other tax exempt properties may claim hardship and request relief from all or part of a fee through the abatement process set out in section 327 below.

(b) The revenues from such DID [tax]-fee will be [utilized for the purpose of providing a parking program which shall include not less than two free hours of parking for anyone parking in any designated municipally or privately owned or operated parking garage or parking lot located within the downtown improvement district pursuant to regulations to be established by the public works commission]paid to the city, and then transferred to the DID entity, after

deduction of any agreed-upon fee for the city's collection costs, to be used solely for the purposes of the DID and consistent with the approved budget.

(c) The DID board of directors shall initially submit its budget and recommended assessment rate to the city council no later than May 1 prior to the beginning of each fiscal year for which the assessment will be assessed, and the city council shall either approve the recommendation or return it to the board of directors with an explanation of the reasons for the rejection. Before approving or returning the recommended budget, including the assessment rate, the council will hold a public hearing to hear from the owner of any property subject to the assessment concerning the budget.

(d) Once the assessment rate is established, the city assessor, at the expense of the district, shall notify in writing the owner(s) of record as of April 1 of each year of properties so assessed, stating the assessment rate and the total amount of fees due for the property. Such fees shall be due and payable to the chief administrative officer in four installments on the same dates that property taxes are due. Such notice may be given by including the DID fees with the property tax bill mailed to the owners of taxable properties within the district. The amount so assessed shall be and remain a lien in the nature of a tax upon the properties so assessed, until the same shall be paid, or such lien is otherwise discharged by operation of law.

(e) Until the DID is activated, the Church Street Marketplace Commission shall annually recommend and the city council shall annually approve and assess upon nonresidential properties, as defined in section 81 hereof, common area fees as provided in Section 326 below.~~[(b) Annual budget.] The commission shall prepare a proposed budget for each fiscal year showing the proposed expenditures and anticipated receipts of such year, which shall [The estimated net cost of operation of the marketplace, after taking account of all anticipated receipts available to meet such cost, shall, on or before the fifteenth day of April, 1980, and annually thereafter,] be reported to the mayor no later than April 15 to be incorporated, with such changes as [he or she] the mayor deems expedient, into the annual budget to be submitted to the city council for the next fiscal year. [In adopting an appropriation for operation of the marketplace, the city council shall not determine that any portion thereof be raised by the city tax levy.] This subsection (e) shall be deemed repealed upon activation of the DID.~~

326 Common area fees.

(a) Until the DID is activated, [€]common area fees are charges levied upon the owners of taxable properties located in the Church Street Marketplace district which shall be used to defray the expenses incurred by the city in connection with the operation, maintenance and repair of the marketplace.

(b) ~~[Any amount appropriated under section 325 of this Charter which is not anticipated from gifts, grants, voluntary contributions, and rentals and fees other than common area fees shall be raised by common area fees.]~~ The city council after not less than one duly warned public hearing shall propose standards to aid in the determination of the benefit described herein. The city council after public hearing and after considering the advice of the commission shall establish standards to aid in the determination of the benefits described herein and shall levy such common area fees upon such properties in the proportion that it judges such properties to be benefited by the construction and/or operation of the marketplace. An important but not necessarily exclusive factor in determining the extent to which the fair market value of such property has been enhanced by virtue of the construction and/or operation of the marketplace. The amount raised by such assessments shall be appropriated to the Church Street marketplace district.

(c) The city council shall set such common area fees for the ensuing fiscal year no later than June ~~[15]~~30 of each year, and ~~[it]~~before doing so shall have given twelve days' notice of the time and place of hearing to the parties interested and shall set forth in its notice a complete schedule of all common area fees set by it and of the properties so assessed. During the twelve days' notice period all parties so assessed, if aggrieved, may appeal, in writing, the assessment to the city council. The city council, immediately following termination of the twelve days' notice period and after soliciting the advice of the commission, shall make final determination of common fees and shall cause such decision to be recorded in full by the chief administrative officer; and when such decision is so recorded, the amount so assessed shall be and remain a lien in the nature of a tax upon the properties so assessed, until the same shall be paid, or such lien is otherwise discharged by operation of law. The city assessor, at the expense of the district, shall thereupon forthwith notify in writing the owner or owners of record as of April 1 of each year of properties so assessed, their agents or attorneys, stating therein the amount of such fees, and such fees shall be due and payable to the chief administrative officer in four installments, on the fifteenth day of August, November, March and June following the making thereof. Notice shall be deemed adequate if made by publication of notice not less than three times not less than

five days nor more than twelve days preceding each installment date. Such notice may also be given by including such common area fees upon the property tax bill mailed to the owners of taxable properties within the district.

(d) This section 326 shall be deemed repealed upon activation of the DID.

[Reserved]

[(e)] 327 Appeal or abatement of assessment

(a) Appeal. Any person or entity subject to the DID special assessment may seek judicial review of the rate set by the city council or of the assessment of that person's or entity's property by filing an action in the Chittenden Civil Division of the Vermont Superior Court no later than August 31 of the year for which the rate or assessment is challenged. This review may only be initiated or maintained if the person or entity has paid and continues to pay under protest each installment of the fee during the pendency of the court action. The amount assessed by the city or by a court in such a proceeding shall be and remain a lien in the nature of a tax upon the properties so assessed until the assessments are fully paid to the city.

(b) Abatement. Any person or entity subject to the DID special assessment may seek an abatement on the basis of illegality, or manifest injustice. A tax-exempt entity may seek abatement by claiming a hardship. The three members of the city council's tax abatement subcommittee and two members of the DID board of directors (selected as provided in the DID's bylaws) shall constitute a board for the abatement of assessments. Penalties and/or fees may be abated only if the board determines that their imposition would be manifestly unjust or illegal, except that in the case of tax-exempt entities, the board may consider whether to grant a hardship and exempt the entity from payment of any part or whole fee or penalty. For purposes of this abatement, a hardship may be granted if the board determines that the tax-exempt entity has demonstrated that it has insufficient funds to pay the assessment or that payment of the assessment would divert resources from a vital community service. The board shall state the reasons for the abatement or hardship exemption and the period covered by its decision.

(c) Until the DID is activated and the Church Street Marketplace District is repealed, this section shall apply with regard to the common area fees for the Church Street Marketplace District.

328 Enforcement; collection

(a) If the person or entity subject to the DID special assessment neglects to pay to the chief administrative officer any quarterly installment of such fee, or any part of any installment, on the date the installment is due and payable, the amount of the installment (or if partial payment was made, the amount remaining due) shall be increased immediately by a penalty of five percent of the original installment amount. If the balance due (including the five percent penalty) is not paid in full by the 15th day of the month after the date when the installment was originally due, that balance (including the five percent penalty) shall be delinquent, and the chief administrative officer shall increase the amount due by an additional one percent of the original installment amount for each month that any part of the balance due (including all penalties) remains unpaid. The city shall proceed to collect delinquent fees and penalties in the manner prescribed in Article 79 of this charter for the collection and enforcement of assessments made in laying out or altering streets and highways.

(b) Until the DID is activated and the Church Street Marketplace District is repealed, this section shall apply with regard to the common area fees for the Church Street Marketplace District.

~~[Any person owning or interested in properties so assessed who is dissatisfied with the amount of such fee shall have the right to judicial review of the city council's decision. Such review shall be initiated by first paying the first installment of the fee so assessed under protest and by filing a notice of appeal in the Chittenden Superior Court within twenty days following August 12 of each year. Notwithstanding the filing of a notice of appeal, all subsequent installments of such fee must also be paid under protest before the court shall have subject matter jurisdiction to render a judgment affecting any such installment. A copy of such notice of appeal shall be served upon the Burlington chief administrative officer. The proceeding before the superior court shall be de novo and the appellant may demand trial by jury. An appeal from the determination of the superior court may be taken to the Vermont Supreme Court, pursuant to the Vermont Rules of Civil and Appellate Procedure. The pendency of such proceedings shall not vacate the lien created upon the properties assessed. Should the court find that a common area fee assessed against an appellant to have been excessive, it shall order the excess payment to be refunded together with such interest thereon that it shall deem appropriate. When such proceedings shall be finally determined, a duly certified copy thereof shall be duly recorded by the chief administrative officer in the records of streets and highways in said chief administrative officer's~~

~~office, within twenty days after the final determination of such proceedings. The amount assessed in such proceedings shall be and remain a lien in the nature of a tax upon the properties so assessed until such assessments are fully paid to the chief administrative officer of the city. In case no assessment shall be made in such proceedings, such records shall discharge said properties from all liens created by the assessments thereon made by the city council as aforesaid.~~

~~(f) If the owner or owners of any property so assessed shall neglect to pay to the chief administrative officer any quarterly installment of such fee on the date such installment is due and payable, the amount of such installment shall be increased by a penalty of five percent. If such installment increased by the five percent penalty is not paid by the 15th day of the month after the date upon which it became due and payable, it shall be delinquent and the chief administrative officer shall increase the amount due by an additional one percent of the original installment. On the 15th day of every month thereafter that the installment or any part thereof remains due, the chief administrative officer shall add to the total amount due an additional amount equal to one percent of the original installment, or any portion thereof, remaining unpaid. The chief administrative officer shall issue a warrant for the collection thereof. The amount due from any person against whom a common area fee has been assessed shall thereafter be deemed to be the amount of any such installment or delinquent portion of such original common area fee increased by all penalties and interest accruing thereon to date and also twelve percent interest, compounded annually on all of such delinquent amounts and any penalties and interest added thereto, from the date of such warrant. The city shall proceed to collect the same in the manner prescribed in this Charter for the collection and enforcement of assessments made in laying out or altering streets and highways.~~

~~(g) The mayor, two members of the city council and two members of the commission, on appointment of the city council, shall constitute a board for the abatement of assessments whenever the same are illegal or in the judgment of the board cannot be collected or are manifestly unjust.~~

~~(h) Meetings of such board shall be convened in the manner herein prescribed for calling special meetings of the city council; and notice thereof signed by the mayor or chief administrative officer, and shall be given to all persons paying common area fees by the publication of notices for two days in all the daily newspapers printed in the city, the first of which publication shall be not more than ten days, and the last not less than three days prior to~~

~~said meeting. Whenever any common area fee, or any part thereof, is abated, the chief administrative officer shall make a minute of such abatement on the original assessment on file in his or her office on the margin of the record thereof.]~~

~~[327]~~**329 Powers supplemental; construction.**

~~(a) [The powers conferred by sections 321 through 326 hereof are supplemental and alternative to other powers conferred by law, and these sections are intended as an independent and comprehensive conferral of powers to accomplish the purpose set forth herein.~~

~~(b)—] The provisions of these sections shall be liberally construed in order to effect their purpose.~~

~~[(e] b) If any provision of these sections shall be held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.~~

~~[(d] c) These sections shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of these sections, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.~~

~~[328—329 [Reserved.].~~

330 Board of tax appeals.

~~A board of tax appeals, constituted in the manner set forth in section 91 of this Charter, is created. The board shall have the same duties and proceed in the same manner to hear and determine tax appeals as a board of civil authority under subchapter 1 of Title 32 of Vermont Statutes Annotated except as otherwise provided in this Charter. Appeals from decisions of the board of tax appeals or from the board of civil authority as referenced in section 92 of this Charter shall be controlled by subchapter 2 of Title 32 of Vermont Statutes Annotated, except that the city assessor may appeal subject to the approval of the city board of finance. The board shall organize each year by the election of a chair, vice chair and clerk. The manner of removal of board members and filling of vacancies shall be as provided in sections 129 and 130 of this Charter and the board members shall, except as otherwise herein expressly provided, be subject to all other provisions of this Charter relating to public officers.]~~

330. Review; expiration.

(a) After five years of operation, the DID board of directors shall conduct a comprehensive review and evaluation of the district boundaries, operations, and costs in relation to the purposes stated herein and shall submit that review to the city council, along with any recommendations for improvement.

(b) The DID shall automatically sunset on June 30, 2029, unless renewed as provided herein. At least ninety days prior to the expiration of the DID, the DID board of directors may submit a new management or operating plan to the council, requesting continuation of the district. After a public hearing, the city council may vote by resolution to extend the district for a specified time or until a specified event occurs.?’’

* Material underlined added.

** Material stricken out deleted and bracketed.

The official copy of the proposed charter amendments with the specific changes being proposed shall be posted in or near the Clerk’s Office and at least two public places in the city by Saturday, January 12, 2019 for public inspection; copies will also be made available to members of the public upon their request.

lb/JSJ, EBlackwood/Warning 2019 – Notice of 1st and 2nd Public Hearing on Proposed Charter Changes (3-05-19)
12/20/18